

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 3-89:

PINE HILLS EDUCATION
ASSOCIATION, MIA,

Complainant,

- vs -

DEPARTMENT OF ADMINISTRATION,
LABOR RELATIONS BUREAU, STATE
OF MONTANA,

Defendant.

FINAL ORDER

The Order of Dismissal was issued by Administrator Robert E. Jensen
on July 5, 1984.

Exceptions to the Order of Dismissal were filed by the Complainant's
Attorney Emilie Loring on July 11, 1984.

Oral argument was scheduled before the Board of Personnel Appeals
on November 2, 1984.

After reviewing the record and considering the briefs and oral
arguments, the Board orders as follows:

1. IT IS ORDERED that the Exceptions to the Order of Dismissal are
hereby denied.

2. IT IS ORDERED that this Board therefore dismisses Count II of the
Unfair Labor Practice.

DATED this 20th day of November, 1984.

BOARD OF PERSONNEL APPEALS

By Alan L. Joscelyn
Alan L. Joscelyn
Chairman

CERTIFICATE OF MAILING

I, Jennifer Jackson, do certify that a true and correct

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 3-83

PINE HILLS EDUCATION ASSOCIATION,
MEA,

Complainant,

vs.

DEPARTMENT OF ADMINISTRATION,
LABOR RELATIONS BUREAU,
STATE OF MONTANA,

Defendant.

ORDER
OF
DISMISSAL

* * * * *

On May 18, 1983, Pine Hills Education Association, MEA, filed this Unfair Labor Practice against the Labor Relations Bureau, Department of Administration, State of Montana. On June 10, 1983 the Defendant Department of Administration filed an Answer. An Order of the Board issued September 13, 1983, deferred Count II of the Unfair Labor Practice under the Collyer Doctrine. An Order of the Board dated December 27, 1983 dismissed in its entirety Count I of the Unfair Labor Practice. Pursuant to the Order of Deferral under Collyer, Count II of the Unfair Labor Practice was submitted to arbitration. An arbitration hearing was held on February 14, 1984, before John H. Abernathy in Miles City. The arbitrator subsequently issued his decision holding in essence the state of Montana did not discriminate against members of the Pine Hills Education Association for conduct engaged in by association members during the strike at the institution which occurred on March 24 and 25 of 1983.

On May 2, 1984, the Association filed a Motion to Proceed with this Board asking that Count II, which had been deferred to arbitration, now should be processed as an Unfair Labor Practice. In response, the Department of Administration on May 8, 1984, filed a Motion to Dismiss the

1 Unfair Labor Practice. The basis for the motion to dismiss
2 was that under the case of Olin Corp., 115 LRM 1056 (1984)
3 the arbitrator's award should be given deference and the
4 Unfair Labor Practice should be dismissed.

5 This Board will review the issue of whether deferral to
6 the arbitrator's decision should be made by using the stan-
7 dards set forth in the Spielberg doctrine and not by use of
8 the Olin Corp. doctrine. The Olin Corp. doctrine appears to
9 be a radical departure from previous NLRB precedent and is
10 not necessarily the law. The Spielberg doctrine has been
11 approved by the Courts and the Olin Corp. doctrine has not
12 been approved by the Courts. This Board finds that the
13 Spielberg doctrine is the applicable standard of review for
14 determining when to give deference to an arbitrator's
15 decision.

16 Applying the Spielberg doctrine to the facts of the
17 case at hand we find the following.

18 Issue No. 1: The issue under the Act was presented and
19 considered in arbitration. In the case of Atlantic Steel
20 Co., 245 NLRB 814, 102 LRM 1247 (1979), the NLRB set forth
21 this standard:

22 [W]hile it may be preferable for the arbitrator to
23 pass on the Unfair Labor Practice directly, the
24 Board generally has not required that he or she do
25 so. Rather, it is necessary only that the arbi-
26 trator has considered all of the evidence relevant
27 to the Unfair Labor Practice in reaching his or
28 her decision.

29 Atlantic Steel supra 102 LRM at 1248.

30 Employing the Atlantic Steel principle and looking to
31 page 4 of the arbitrator's decision wherein Article IV of
32 the collective bargaining agreement concerning nondiscrimi-
nation is discussed, it is stated that "no member of the
association shall be discharged or discriminated against for
upholding association principles." The defense of the asso-
ciation at the arbitration hearing was that the association

1 members were engaged in conduct which upheld association
2 principles when they sabotaged and hid equipment before the
3 strike. Count 11 of the Unfair Labor Practice alleges dis-
4 crimination by the institution against striking association
5 members. It is thus seen that the arbitrator did consider
6 all of the evidence relevant to the Unfair Labor Practice
7 charge in reaching his decision. Thus Issue 1 is satisfied
8 for purposes of deferral under Speilberg.

9 Issue No. 2: Were the proceedings fair and regular?

10 There's been no allegation that the proceedings before
11 arbitrator Abernathy were not fair and regular. Therefore
12 Issue No. 2 under the Speilberg doctrine is satisfied.

13 Issue No. 3: Was there an agreement that all parties
14 would be bound by the award?

15 There's been no issue raised by any of the parties that
16 the parties were not to be bound by the arbitrator's award.
17 Therefore Issue No. 3 for the purposes of the Speilberg
18 doctrine has been satisfied.

19 Issue No. 4: Is the award repugnant to the policies of
20 the act?

21 In the case of Inland Steel Co., 263 NLRB No. 147, 117
22 LRRM 1193 (1982), the NLRB set forth this test.

23 [T]he test of repugnancy under Speilberg is not
24 whether the Board would have reached the same
25 result as an arbitrator, but whether the arbitra-
26 tor's award is palpably wrong as a matter of law.
27 Inland Steel, supra 111 LRRM at 1193.

28 Examining the conduct of the association members who
29 engaged in sabotage of institution property, hiding institu-
30 tion property, and using inmates from the institution to
31 help in some of the conduct, and examining the arbitrator's
32 decision, which affirmed with some modifications the insti-
tution's discipline of these members, we cannot conclude

1 that the arbitrator's decision is palpably wrong under the
2 Act. We find that Issue No. 4 under the Speilberg doctrine
3 is satisfied for purposes of deferral to the arbitrator's
4 award.

5 This Board therefore, on the basis of the above
6 reasons, gives deference to the arbitrator's decision in
7 this case and hereby dismisses Count II of the Unfair Labor
8 Practice.

9 DATED this 5 day of July, 1984.

10 BOARD OF PERSONNEL APPEALS

11 BY: Robert R. Jensen
12 ROBERT R. JENSEN,
13 Administrator

14 * * * * *

15 CERTIFICATE OF MAILING

16 The undersigned does certify that a true and correct
17 copy of this document was mailed to the following on the
18 5th day of July, 1984.

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